

S.D.N.Y.-N.Y.C  
16-cr-389  
Hellerstein, J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30<sup>th</sup> day of July, two thousand twenty.

Present:

Robert A. Katzmann,  
*Chief Judge,*  
Rosemary S. Pooler,  
Joseph F. Bianco,  
*Circuit Judges.*

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: Jul 30 2020
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In re New York City Correction Officers' Benevolent Association,

*Petitioner.*

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New York City Correction Officers' Benevolent Association,

*Petitioner,*

v.

20-1400

Jona Rechnitz, United States of America,

*Respondents.*

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United States of America,

*Appellee,*

v.

20-1011

Jona Rechnitz,

*Defendant-Appellant.*

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The proceedings docketed under 20-1011 and 20-1400 are consolidated for purposes of this order.

In 20-1400, Petitioner, the New York Correction Officers' Benevolent Association, petitions under the Crime Victims' Rights Act ("CVRA"), 18 U.S.C. § 3771, for an order directing the district court to modify its restitution order. Respondent Jona Rechnitz moves to consolidate the CVRA proceeding with his direct criminal appeal, docketed under 20-1011. Upon due consideration, it is hereby ORDERED that the CVRA petition is GRANTED, to the extent described below, and Respondent's motion to consolidate is DENIED as moot.

First, we decline to dismiss the CVRA petition as untimely. Respondent raised the issue only in a footnote, which is insufficient to preserve the argument. *Chamberlain v. City of White Plains*, 960 F.3d 100, 116 n.23 (2d Cir. 2020). In any event, Respondent has not demonstrated that prejudice resulted from Petitioner's alleged delay in filing the petition. *See Fed. Ins. Co. v. United States*, 882 F.3d 348, 365 (2d Cir. 2018).


Second, we grant the CVRA petition solely to allow the district court to reconsider its restitution determination in light of new information about both Respondent's assets and his cooperation with the district court's efforts to determine those assets. Prior to imposing restitution, the district court considered Respondent's culpability relative to his co-conspirators and his apparently incomplete financial disclosures. However, when new information about the Respondent's finances came to light, the district court determined that it was unable to reconsider its decision because Respondent had appealed, stripping the district court of jurisdiction.

We return jurisdiction to the district court so that it can reconsider its assessment of Respondent's culpability and financial condition in light of the new evidence presented by Petitioner and any other factors found relevant by the district court. *See United States v. Jacobson*, 15 F.3d 19, 21-22 (2d Cir. 1994). We express no opinion about that evidence, and leave its evaluation to the district court in the first instance.

It is further ORDERED that Respondent's direct appeal is STAYED pending the outcome of the new district court restitution proceedings. If Respondent wishes to appeal any new district court order, he must file an amended notice of appeal; if not, he should notify this Court, within 21 days of the district court's new order, that the district court has completed its review and this Court may lift the stay. If Petitioner wishes to challenge any new restitution order, it should file a new CVRA petition.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

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United States Court of Appeals, Second Circuit

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